

**IN THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

SOYLAND POWER COOPERATIVE, INC.,)

Plaintiff,)

v.)

Case No.: 2002-MR-00482

ILLINOIS COMMERCE COMMISSION,)

CENTRAL ILLINOIS PUBLIC SERVICE)

COMPANY (AMERENCIPS), FREEMAN)

UNITED COAL MINING COMPANY and)

RURAL ELECTRIC CONVENIENCE)

COOPERATIVE COMPANY,)

Defendants.)

DEFENDANT AMERENCIPS' SECTION 2-615 MOTION TO DISMISS

Defendant, Central Illinois Public Service Company ("CIPS"), by and through its attorneys, Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. and Scott C. Helmholz, pursuant to § 2-615 of the Code of Civil Procedure, hereby moves this Honorable Court to dismiss the Complaint of Plaintiff Soyland Power Cooperative ("Soyland") this cause of action with prejudice, and in support thereof, states as follows:

1. Soyland and Rural Electric Convenience Cooperative ("RECC") jointly filed a Complaint against CIPS at the Illinois Commerce Commission (the "Commission") pursuant to the Electric Supplier Act ("ESA"), 220 ILCS 30/1 et. seq., on October 31, 2001. (Comp. ¶6).

2. The Commission's Administrative Law Judge ("ALJ") granted CIPS' motion to dismiss Soyland as a party to RECC's Complaint, and the Commission denied Soyland's petition for interlocutory review of the ALJ's ruling on July 10, 2002. (¶¶9 and 13). Soyland's Complaint here does not state whether Soyland filed a Petition for Reconsideration of the Commission's July 10, 2002 Order affirming the ALJ's dismissal of Soyland as a party plaintiff. Soyland's Complaint

here concerns only the propriety of the Commission's September 5, 2002 order denying Soyland's Petition for Reconsideration of the Commission's denial of Soyland's Petition for Leave to Intervene. (See ¶¶20, 21 and Soyland's prayer for relief A at page 10, "[r]everse the decision . . . dated September 5, 2002).

3. On June 18, 2002, while its Petition for Interlocutory Review of the ALJ order denying Soyland party status was pending before the Commission, Soyland filed a Petition for Leave to Intervene.

4. The ALJ denied Soyland's Petition for Leave to Intervene by Order dated June 26, 2002 (¶ 16), and thereafter, on July 16, 2002, Soyland filed a Petition for Interlocutory Review of the ALJ's ruling which the Commission denied on August 7, 2002. (¶¶ 17 and 18).

5. On August 26, 2002, Soyland filed a Petition for Reconsideration of the Commission's August 7, 2002 Order denying intervention, which the Commission denied on September 5, 2002. Soyland characterizes this Order as a final administrative Order "terminating all of Soyland's interests in the proceeding". (¶¶ 19 and 20).

6. Soyland's Complaint to this Court asserts that the Commission abused its discretion in denying its Motions for Leave to Intervene, for Interlocutory Review, and for Reconsideration. (¶¶ 22 - 25).

7. CIPS moves to dismiss Soyland's Complaint as insufficient in law for failure to allege sufficient facts to confer subject matter jurisdiction upon this Court pursuant to §3-104 of the Administrative Review Law.

8. Judicial review of administrative decisions is governed by the Administrative Review Law. Central States Trucking Co. v. Dep't of Employment Security, 248 Ill.App.3d 86, 88, 187

Ill.Dec. 839, 841, 618 N.E.2d 430, 432 (1st Dist. 1983). Because the Administrative Review Law departs from the common law, courts must strictly adhere to its procedures. Id. A trial court's authority in reviewing administrative decisions is limited to the powers expressed in the administrative review law. Dundee Township v. Department of Revenue, 325 Ill.App.3d 218, 221, 757 N.E.2d 982, 984, 259 Ill.Dec. 119, 121 (2nd Dist. 2001).

9. Circuit courts only possess jurisdiction to review "final administrative decisions." 735 ILCS 5/3-104. In the absence of a final administrative decision, the circuit court lacks jurisdiction to consider the matter. O'Rourke v. Access Health, Inc., 282 Ill.App.3d 394, 401, 668 N.E.2d 214, 219, 218 Ill.Dec. 51, 56 (1st Dist. 1996), appeal denied, 168 Ill.2d 599, 671 N.E.2d 734, 219 Ill.Dec. 567; See also, Jagielnik v. Bd. of Trustee's of Police Pension Fund of Village of Mundelein, 211 Ill.App.3d 26, 32, 569 N.E.2d 1293, 1296, 155 Ill.Dec. 682, 685 (2nd Dist. 1991), appeal denied, 141 Ill.2d 542, 580 N.E.2d 116, 162 Ill.Dec. 490.

10. The Administrative Review Law defines an "administrative decision" as a "decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." [emphasis added]. 735 ILCS 5/3-101.

11. In the present case, the Commission's denial of Soyland's Petition for Reconsideration of the denial of its Petition for Leave to Intervene is not a "final administrative decision" within the meaning of §3-104 because (a) Soyland never perfected "party" status in the proceedings before the Commission against CIPS, and (b) the denial of Soyland's Petition for Reconsideration did not "terminate the proceedings" before the Commission.

12. The Commission's Rules of Practice define a "party" as a "person who initiates a

Commission proceeding by filing an application, complaint or petition with the Commission, or who is named as a respondent, or who is allowed by the Commission or by statute to intervene in a proceeding.” [emphasis added]. 83 Ill. Admin. Code 200.40. Although Soyland may have arguably conferred “party” status on itself by jointly filing the original complaint with RECC under the first part of §200.40, Soyland must be deemed to have lost any such status when the Commission affirmed the ALJ’s decision to dismiss Soyland as a party on July 10, 2002. Soyland did not seek reconsideration or rehearing of that Commission order and instead chose to pursue a Petition for Leave to Intervene. Soyland does not cite any statutory provision that authorizes it to intervene in this Commission proceeding.

13. The Commission defines an “intervenor” as a “person who, upon written petition, is permitted to intervene in any proceeding before the Commission.” Id. Because the Commission declined to permit Soyland to intervene in the Commission proceeding against CIPS after dismissing Soyland as a party plaintiff, Soyland does not qualify as an intervenor, and cannot attain “party” status as an intervenor under the second clause of §200.40. Therefore, the Commission’s denial of Soyland’s Petition for Reconsideration of the denial of its Petition for Leave to Intervene is not a final administrative decision subject to this Court’s review under the administrative review law. See In Re Toledo, 312 Ill.App.3d 131, 726 N.E.2d 43, 244 Ill.Dec. 447 (1st Dist. 2000) (dismissing defendant that was not a party of record to the proceedings before the Illinois Human Rights Commission).

14. The denial of Soyland’s Petition for Reconsideration did not “terminate the proceedings” before the Commission within the meaning of §3-101 of the Administrative Review Law. The decision that terminates the proceedings will be the Commission’s ultimate decision on.

the merits of the contested complaint case by RECC against CIPS. For this additional reason, the Commission's denial of Soyland's Petition for Leave for Reconsideration is not a final administrative decision subject to this Court's review under the administrative review law.

15. Nizzardo v. State Traffic Comm'n, 788 A.2d 1158 (Conn. 2002), although not authoritative here, provides persuasive reasoning in support of CIPS' motion. Nizzardo held that an administrative agency's decision on a petition to intervene is not a final administrative decision subject to review under Connecticut's administrative review law. Id. at 1160-1161. The court stated that the "final" decision of an administrative agency is the ultimate decision on the merits of the contested case before it. Id. at 1168. The court further stated that no rights or obligations of a party were adjudicated by the denial of the petition to intervene because an unsuccessful intervenor never achieves party status. Id. at 1167.

The court in Nizzardo also noted several policy reasons supporting its conclusion. First, the court noted that allowing an immediate appeal of the denial of a petition to intervene would disrupt the orderly adjudication and administrative decision-making process by requiring the agency to suspend its adjudication of the contested case before it. Id. at 1167. Second, allowing such an appeal would involve a court prematurely and expose the agency to judicial interference prior to formulating an administrative decision whose effects would be felt in a concrete way. Id. at 1168. Until the agency determines the ultimate merits in the underlying action, there is no way of knowing whether the alleged interest or concerns of the person seeking to intervene will be affected in any way; depending upon the agency's ultimate decision, the third party's concerns may be moot. Id. See also, Charter Medical-Jacksonville, Inc. v. Community Psychiatric Centers of Florida, Inc., 482 So.2d 437 (Fla. 1986) (piecemeal appellate review of an agency's denial of a petition for intervention

is inappropriate and unduly burdensome to the appellate system).

16. Likewise, in the present case, the Commission's adjudication of the merits of RECC's claim will constitute its "final administrative decision". Soyland lacked "party" status in the underlying proceeding before the Commission as a matter of law. Allowing Soyland to bring a piecemeal interlocutory appeal of the Commission's denial of its Petition for Leave to Intervene will delay the Commission's ultimate decision on the merits and prematurely involve the Court before Soyland has any way of knowing whether its interest or concerns will be affected. If Soyland's co-complainant, RECC, succeeds before the Commission, Soyland's concerns will be moot.

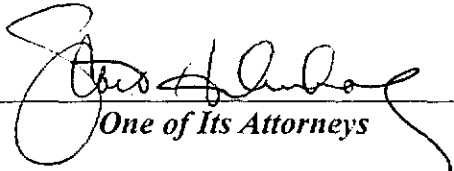
17. This Court may, in its discretion, grant this Motion with prejudice if the Court finds that Soyland cannot, under any reasonable circumstances, amend its complaint to state a cause of action. See, e.g., On Tap Premium Quality Waters v. Bank of Northern Illinois, 262 Ill.App.3d 254, 634 N.E.2d 425, 199 Ill. Dec. 586, 594 (2nd Dist. 1994) ("... within the trial court's sound discretion whether to allow amendment or to terminate finally the litigation"). Hume & Liechty Veterinary Associates v. Hodes, 259 Ill.App.3d 367, 632 N.E.2d 46, 197 Ill. Dec. 977, 979 (1st Dist. 1994) ("... litigant does not have an absolute right to amend under section 2-615, and we will not disturb a trial court's decision dismissing a complaint with prejudice absent an abuse of discretion").

WHEREFORE, Defendant CIPS requests that this Honorable Court grant this Section 2-615 Motion to Dismiss, with prejudice.

Respectfully submitted,

**CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS, Defendant,**

By: _____


One of Its Attorneys

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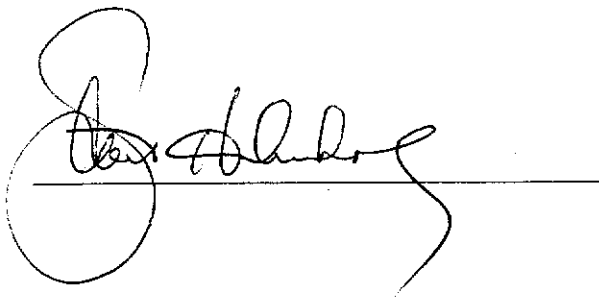
The undersigned hereby certifies that a copy of the foregoing *Defendant AmerenCIPS'*
Section 2-615 Motion to Dismiss was served by placing same in a sealed envelope addressed:

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and by depositing same in the United States mail in Springfield, Illinois, on the 6th day of *December*,
2002, with postage fully prepaid.

A handwritten signature in black ink, appearing to read "Scott C. Helmholz", is written over a horizontal line. The signature is stylized with large loops and a long trailing stroke.

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